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Supreme Court of the United States

October Term, 1940.

No. 594.

UNION PACIFIC RAILROAD COMPANY, a Corporation; CITY OF KANSAS CITY, KANSAS; DON C. MCCOMBS, FRANCIS BLAKE AND GEORGE T. DARBY, Commissioners, etc., ET AL., *Appellants*,

vs.

THE UNITED STATES OF AMERICA; THE ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY; CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY; GUY A. THOMPSON, as Trustee of Missouri Pacific Railroad Company; MISSOURI PACIFIC RAILROAD COMPANY; FRANK O. LOWDEN, JAMES E. GORMAN AND JOSEPH B. FLEMING, as Trustees of Chicago, Rock Island & Pacific Railway Company; CHICAGO, ROCK ISLAND & PACIFIC RAILWAY COMPANY; KANSAS CITY, MISSOURI, ET AL., *Appellees*.

APPELLANTS' SUGGESTIONS IN OPPOSITION TO MOTION OF KANSAS CITY, MISSOURI; THE ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY; CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY; FRANK O. LOWDEN, JAMES E. GORMAN AND JOSEPH B. FLEMING, AS TRUSTEES OF CHICAGO, ROCK ISLAND & PACIFIC RAILWAY COMPANY; AND GUY A. THOMPSON, TRUSTEE OF MISSOURI PACIFIC RAILROAD COMPANY, A PART OF THE APPELLEES, TO POSTPONE ORAL ARGUMENT.

ALTON H. SKINNER,
Counsel for Appellants City of Kansas City, Kansas; Don C. McCombs, Francis Blake and George T. Darby, as Commissioners and constituting the Governing Body of said City; Alton H. Skinner, Howard Payne and Truman Schlup, duly appointed officials of said City.

THOMAS W. BOCKES,
HENRY N. ESS,
Counsel for Appellant Union Pacific Railroad Company.

SMITH-GRIEVES, LAW PRINTERS, KANSAS CITY, MO.

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Appellants Union Pacific Railroad Company, City of Kansas City, Kansas, and its officers, oppose the motion filed by part of the appellees named in the title hereof, for a postponement of the argument for a period of thirty days, for the following reasons:

1. The appellees named in the motion were served with paged galley proofs of appellants' brief March 12, 1941, without record references, in advance of receipt by appellants of the printed record, and appellees were informed that they would have until the day of argument to file their briefs in this Court.

2. Within twenty-four hours after receipt of the printed record appellants inserted record references in the paged galleys, and final brief, including such record references, was served upon appellees March 14, 1941.

3. Service thus made of paged galleys and final brief will give appellees more time for the preparation and filing of their brief than is prescribed by the rule of this Court.

4. The orginal record which appellees by their stipulation agreed was a fair, correct and complete record transcript of all material parts of the record (R. 1464-5) in the Court below was delivered to appellees in November, 1940.

5. On December 29, 1939, when the instant suit was filed in the District Court, appellent City's market, built on public land in part with a federal grant, was in full operation; since the institution of the suit in which the District Court by injunctive process assumed control of rates of rental which the City might charge, appellant City's market has been completely vacated and is not now being operated.

6. During the trial of the suit in the Court below appellee railroads began and since the conclusion thereof have practically completed the construction of a team track yard in Kansas City, Missouri, and have financed the appellee City of Kansas City, Missouri, in the construction of a viaduct or bridge connecting the team track yard with a new competing market built and in the process

of being built by appellee Kansas City, Missouri; appellee Kansas City, Missouri, since the entry of final decree in this case has initiated proceedings for the condemnation of land upon which to build additions to its present market and is offering to issue revenue bonds to defray the cost of acquiring such lands and constructing wholesale units designed to compete with appellant City's market; that appellee railroads have cooperated with and aided appellee City in such activities occurring since the institution of this suit to enable them to complete said market in Kansas City, Missouri.

For the foregoing reasons appellants respectfully pray that the motion be denied.

Respectfully submitted,

ALTON H. SKINNER,
Counsel for Appellants City of Kansas City, Kansas; Don C. McCombs, Francis Blake and George T. Darby, as Commissioners and constituting the Governing Body of said City; Alton H. Skinner, Howard Payne and Truman Schlup, duly appointed officials of said City.

THOMAS W. BOCKES,
HENRY N. ESS,
Counsel for Appellant Union Pacific Railroad Company.

State of Kansas, County of Wyandotte—ss.

Alton H. Skinner, being first duly sworn, on his oath states that he is counsel for appellants City of Kansas City, Kansas; Don C. McCombs, Francis Blake and George T. Darby, as Commissioners and constituting the Governing Body of said City; Alton H. Skinner, Howard Payne and Truman Schlup, duly appointed officials of said City, in the above entitled cause; that the statements contained in the foregoing suggestions are true.

ALTON H. SKINNER.

Subscribed and sworn to before me this 14th day of March, 1941.

JESSIE DUNLAP,

(Notarial Seal) *Notary Public in and for Wyandotte County, Kansas.*

My commission expires December 26, 1943.

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